OAKFIELD ENTERPRISES SDN BHD A

v.

TENAGA NASIONAL BHD

COURT OF APPEAL, PUTRAJAYA B
MOKHTAR SIDIN JCA
HASHIM YUSOFF JCA
AZMEL MAAMOR JCA
[CIVIL APPEAL NO: J-02-158-1998]
5 NOVEMBER 2009 C

PUBLIC UTILITIES: *Electricity - Installation of cables - Right to enter land - Trespass - Section 53 Electricity Act 1949, whether complied with - Whether defendant/respondent authorised by Land Office to enter land to carry out said installation* D

LAND LAW: *Trespass - Wrongful entry - Installation of electrical cables - Section 53 Electricity Act 1949, whether complied with - Whether defendant/respondent authorised by Land Office to enter land to carry out said installation* E

TORT: *Trespass to land - Authorisation given to defendant to carry out work on plaintiff's land - Installation of electrical cables - Electricity Act 1949, s. 53*

The plaintiff's/appellant's claim against the defendant/respondent for F
trespass was dismissed by the High Court. Hence, the present appeal in which the appellant raised the following three issues: (i) whether s. 53(1) to (9) of the Electricity Act 1949 ('Act') was followed by the respondent; (ii) whether the respondent followed s. 53(9A) of the Act to protect its interest, if any; and (iii)(a) G
whether the transfer of land from Mosbert Berhad to Jet Age and subsequently from Jet Age to Oakfield would have extinguished the respondent's rights over the said land; (b) whether the surrender and re-alienation of the original land into subdivided lots would have destroyed any interest the respondent had in the original land. H

Held (dismissing the appeal with costs)
Per Hashim Yusoff JCA delivering the judgment of the court:

(1) In respect of (i) and (ii), the trial judge made a correct finding I
of fact that Mosbert Berhad did not appear at the enquiry despite being informed about the date of the enquiry. The trial judge also referred to the provisions of s. 53 and its subss. (1)

A to (7) of the Act in his grounds of judgment. If Mosbert Berhad was unhappy with the order of the Collector, it could have appealed against the same, but it did not. A letter dated 9 November 1974 from the Johor Bahru Land Office to the respondent confirmed the fact that the respondent had sent the B notice to the land owner (Mosbert Berhad) for the purpose of installing the cable lines and since the Land Office did not receive any objection from the land owner, it thus assumed that the respondent could enter the lands involved to carry out the said task. The fact that the Collector had listed out the exact C number of trees on each lot for the purpose of compensation clearly showed that the Land Office had conducted a proper enquiry. Based on the above, it was clear that the respondent had complied with s. 53 of the Act and the trial judge had not erred in arriving at the same. (paras 9-13)

D

(2) With regard to (iii), the real issue in this appeal was not about the respondent acquiring the said land as the owner but about whether the respondent had the right to enter the said land in order to put up the pylons and install the high-tension cables E across them. The fact that the appellant, on the facts, became the new registered owner of the said land on 5 October 1988 did not change the fact that the respondent had been authorised by the Land Office on 9 November 1974 to enter the said land to carry out the installation of the high-tension F cables. (para 17)

Bahasa Malaysia *Translation Of Headnotes*

Tuntutan plaintif/perayu terhadap defendan/responden untuk pencerobohan telah ditolak oleh Mahkamah Tinggi. Oleh yang G demikian, rayuan semasa di mana perayu membangkitkan tiga isu-isu berikut: (i) sama ada s. 53(1) hingga (9) Akta Elektrik 1949 ('Akta') telah dipatuhi oleh responden; (ii) sama ada responden telah mematuhi s. 53(9A) Akta untuk melindungi kepentingannya, jika ada; dan (iii)(a) sama ada pemindahan tanah dari Mosbert H Berhad ke Jet Age dan kemudiannya dari Jet Age ke Oakfield telah melenyapkan hak-hak responden atas tanah tersebut; (b) sama ada penyerahan dan pengasingan semula tanah asal kepada lot-lot yang dibahagikan telah menghapuskan apa-apa kepentingan yang dipunyai oleh responden dalam tanah asal.

I

Diputuskan (menolak rayuan dengan kos)
Oleh Hashim Yusoff HMR menyampaikan penghakiman mahkamah:

(1) Berkenaan dengan (i) dan (ii), hakim perbicaraan membuat dapatan fakta yang betul bahawa Mosbert Berhad tidak menghadiri siasatan walapun ia telah telahpun diberitahu tentang tarikh siasatan tersebut. Hakim perbicaraan juga telah merujuk kepada peruntukan-peruntukan s. 53 dan seksyen-seksyen bawahannya (1) hingga (7) Akta dalam alasan-alasan penghakimannya. Jikalau Mosbert Berhad tidak puas hati dengan perintah Pemungut, ia boleh merayu terhadap yang sama, tetapi ia tidak. Sepucuk surat bertarikh 9 November 1974 daripada Pejabat Tanah Johor Bahru kepada responden mengesahkan fakta bahawa responden telah menghantar notis kepada pemilik tanah (Mosbert Berhad) bagi tujuan memasangkan talian-talian kabel dan oleh kerana Pejabat Tanah tidak menerima apa-apa bantahan dari pemilik tanah, ia oleh itu menganggap bahawa responden boleh memasuki tanah yang terlibat untuk melaksanakan tugas tersebut. Kenyataan bahawa Pemungut telah senaraikan nombor pokok-pokok di setiap lot dengan tepat bagi tujuan pampasan membuktikan dengan jelas bahawa Pejabat Tanah telah menjalankan suatu siasatan yang berpatutan. Berdasarkan semua ini, ia adalah jelas bahawa responden telah mematuhi s. 53 Akta dan hakim perbicaraan tidak khilaf apabila mencapai kesimpulan yang sama.

(2) Berhubung dengan (iii), isu sebenar dalam rayuan ini bukan mengenai responden mengambil tanah tersebut sebagai pemilik tetapi tentang sama ada responden mempunyai hak untuk memasuki tanah tersebut supaya mendirikan pilon-pilon dan memasangkan kabel tegangan tinggi merentasi mereka. Kenyataan bahawa perayu, berdasarkan fakta-fakta, telah menjadi pemilik berdaftar baru tanah tersebut pada 5 Oktober 1974 tidak mengubah kenyataan bahawa responden telah diberikuasa oleh Pejabat Tanah pada 9 November 1974 untuk memasuki tanah tersebut untuk menjalankan pemasangan kabel tegangan tinggi.

Case(s) referred to:
Punca Klasik Sdn Bhd v. Foh Chong & Sons Sdn Bhd & Ors [1998] 1 CLJ 601 HC ***(refd)***

A **Legislation referred to:**
Electricity Act 1949, s. 53(1)-(9), (9A)

[Please note that the Electricity Act 1949 has been repealed by the Electricity Supply Act 1990.]

B *For the appellant - P Suppiah (Noor Asiah with him); M/s J Singh & Co*
For the respondent - Ng Chew Hor (S Patmanathan, Mesnor Bujang with him); M/s Mohd Akhir & Partners

[Appeal from High Court, Johor Bahru; Civil Suit No: 22-239-1989]

C *[Editor's note: For the High Court judgment, please see Oakfield Enterprises Sdn Bhd v. Tenaga Nasional Bhd [1998] 1 LNS 430.]*

Reported by Suresh Nathan

D

JUDGMENT

Hashim Yusoff JCA:

[1] The plaintiff's (appellant) claim against the defendant
E (respondent) is for trespass. In the High court, the learned trial judge after a full trial, dismissed the appellant's claim with costs. Hence, this appeal before us. After hearing arguments from both parties, we unanimously dismissed this appeal with costs. We now give our reasons for doing so.

F

Facts

[2] The full facts of this case can be found in the grounds of judgment of the learned trial judge (see appeal record Bahagian A
G pp. 21-35). We do not intend to reproduce them here.

[3] At the outset of hearing this appeal, learned counsel for the appellant applied to adduce a new piece of evidence ie, a letter dated 1 November 1974. However he also said that the letter was available earlier but did not know why it was not produced at the
H court below. As such we found no merits in the said application (kandungan 10A) and accordingly dismissed it.

[4] Learned counsel for the appellant proceeded to raise three main issues which were agreed upon by learned counsel for the
I respondent in this appeal ie,:

(i) Whether s. 53(1)-(9) of the Electricity Act 1949 ("the Act") was followed by the respondent;

(ii) Whether the respondent followed s. 53(9A) to protect their interest, if any;

(iii) (a) Whether the transfer of the land from Mosbert Berhad to Jet Age and subsequently from Jet Age to Oakfield would have extinguish the respondent's rights over the said land;

(b) Whether the surrender and realienation into sub-divided lots of the original land would have destroyed any interest the respondent had in the original land.

Re Issues (i) And (ii)

[5] We will deal with these two issues together as they both relate to s. 53 of the Act.

[6] Learned counsel referred to paras 2-6 of the Memorandum of Appeal and submitted that the learned trial judge had erred in finding that there was an enquiry held under s. 53 of the Act when there was no evidence to support that finding.

[7] Learned counsel for the respondent referred to a letter dated 20 April 1974 whereby the Land Administrator had given notice to the respondent to hear any objections from the land owners to be held at the Johor Bahru Land Office on 30 April 1974 at 9.30am (see AR Bahagian C p. 387).

[8] On this issue, we find that the learned trial judge in his grounds of judgment (at p. 47 of the appeal records ("AR") Bahagian A) referred to the evidence of the Assistant Land Administrator (SD2) who said that according to his records, LLN had served a notice on Mosbert Berhad on 3 January 1973 and that the Collector had received a letter dated 6 January 1973 from one Messrs Wong & Paramjothy acting on behalf of Mosbert Berhad objecting to the proposed entry by the LLN on the said land. His subsequent records also showed that Mosbert Berhad never appeared at the enquiry to put further their objection although they were informed of the date, ie, 30 April 1974.

[9] It is a finding of fact by the learned trial judge on this issue that although Mosbert Berhad had been informed about the date of the enquiry, it still did not appear at the enquiry. We are of the view that the learned trial judge did not err on this part.

[10] In his grounds of judgment the learned trial judge also referred to the provisions of s. 53 and its sub-sections (1)-(7) of the Act. As submitted by the learned counsel for the respondent, if Mosbert was unhappy with the order of the Collector, it could have appealed against the same, but it did not.

[11] We also agree with the submission of the learned counsel for the respondent that the letter dated 9 November 1974 from the Johor Bahru Land Office to the respondent, confirms that fact that the respondent had sent the notice to the land owner (Mosbert Berhad) for the purpose of doing the works to install the cable lines and since the Land Office did not receive any objection from the land owner, they therefore assume that the respondent could enter on the lands involved to carry out the works.

[12] The fact that the Collector had listed out the exact number of trees on each lot (see AR Bahagian C pp. 396-402) for the purpose of compensation clearly shows that there had been a proper enquiry done by the Land Office. The letter from the Land Office dated 2 May 1974 to the LLN asking for the payment of the compensation show that Mosbert Berhad's name is not included in it. This is because as seen at p. 390 of Bahagian C of Appeal Records, lot No. 83, No. title G. 72 and Lot No. 66, title No. G. 183 both registered under Mosbert Berhad as the owner, shows the word "kosong" ie, no trees were involved.

[13] Based on the above, we find that s. 53 of the Act had been complied with by the respondent and the learned trial judge had not made any error in arriving at the same.

Re Issue (iii)

[14] By order dated 12 January 1977 the Johor Bahru High Court ordered Mosbert Berhad to be wound up. About four years later, by Agreement of Sale dated 1 April 1981 (exh. P3) Mosbert's land was sold through the Official Receiver to Jet Age Construction Sdn. Bhd. It was expressly acknowledged in the Agreement that before it was wound up, Mosbert Berhad had "sold part of the said land to a number of individual purchasers some of whom filed caveats on the said land." and that the LLN had its cables running through an area of about five acres on the said land.

[15] On 28 June 1986 Jet Age sold the said land to Oakfield (the appellant). The transfer of ownership of the said land from Mosbert Berhad to Jet Age and from Jet Age to Oakfield were simultaneously effected on 18 November 1987. Subsequently the appellant was successful in obtaining the lapsed approval for sub-division of the said land 1988 from the State Executive Committee. Thereafter the original title to the said land was destroyed and on 5 October 1988 the appellant was issued 523 separate titles in its place.

[16] Learned counsel for the appellant submitted that the learned trial judge had erred in failing to hold that the respondent had failed to register its rights under s. 53(9A) of the Act, thus resulting in LLN not being consulted when the said land was given the new separate titles. Reference was made to the case of *Punca Klasik Sdn. Bhd. v. Foh Chong & Sons Sdn Bhd & Ors* [1998] 1 CLJ 601 at 602 as follows:

> ... It is an established principle of law that the acquisition of land with notice of a prior unregistered interest in land cannot be construed as fraud. The registration of a title or interest in land will defeat any minor unregistered interest in land ...

[17] With respect, in this appeal the real issue is not about the respondent acquiring the said land as the owner. It is just about whether the respondent had the right to enter upon the said land in order to put up the pylons and install the high-tension cables across it. So we feel, that the fact that the appellant became the new registered owner of the said land with the issuance of the new separate titles on 5 October 1988 to replace the original title does not change the fact that the respondent had been authorised by the Land Office on 9 November 1974 to enter the said land to carry out the installation of the high-tension cables (see AR Bahagian C pp. 405-406).

[18] For the above reasons the appeal is dismissed with costs.